

46 Am. Jur. 2d Judges § 92

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Judges

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IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification

2. Interests as Grounds for Disqualification

b. Particular Interests as Grounds for Disqualification

(1) Pecuniary or Property Interest

§ 92. Pecuniary or property interest of judge as grounds for disqualification, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#) 42 to 44

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[Disqualification of judge based on property-ownership interest in litigation which consists of more than mere ownership of stock—state cases, 56 A.L.R.5th 783](#)

[Interest of judge in an official or representative capacity, or relationship of judge to one who is a party in an official or representative capacity, as disqualification, 10 A.L.R.2d 1307](#)

[Disqualification of judge under 28 U.S.C.A. s 455\(b\)\(4\), providing for disqualification where judge has financial or other interest in proceeding, 163 A.L.R. Fed. 575](#)

The probability of unfairness is so great that a per se rule of disqualification is required when the trier has a pecuniary interest in the outcome.¹ A judge is disqualified to sit in an action where he or she has any pecuniary interest in its result² or owns property that will be affected by its outcome.³ Where the judge holds a direct property-ownership interest in the property that is the subject of the controversy over which he or she is to preside, the judge has been found to be disqualified in some instances⁴ although not in other instances.⁵

Where a judge's interest in the outcome of a case is pecuniary, the need for disqualification due to bias usually will be clear.⁶ One in a judicial position may not have a pecuniary interest in a conviction,⁷ and in a situation in which the trial judge may benefit in a pecuniary way depending on his or her decision, the judge would have no alternative but to disqualify him- or herself.⁸

Caution:

Under some circumstances, a judge's interest in a nonparty with a financial interest in a case may require the judge's recusal from that case.⁹

The Code of Judicial Conduct specifically requires the judge to disqualify him- or herself when the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy.¹⁰ For these purposes, an "economic interest" means ownership of more than a de minimis legal or equitable interest. Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include (1) an interest in the individual holdings within a mutual or common investment fund; (2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant; (3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or (4) an interest in the issuer of government securities held by the judge.¹¹

The federal statute regarding the disqualification of judges requires disqualification where the judge knows that he or she, individually or as a fiduciary, or his or her spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.¹²

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Footnotes

- 1 Sherryland, Inc. v. Snuffer, 150 N.H. 262, 837 A.2d 316 (2003).
- 2 Rodriguez v. Copenhaver, 823 F.3d 1238 (9th Cir. 2016); State v. Granados, 235 Ariz. 321, 332 P.3d 68 (Ct. App. Div. 2 2014); State v. Sawyer, 297 Kan. 902, 305 P.3d 608 (2013); Okrie v. State of Mich., 306 Mich. App. 445, 857 N.W.2d 254 (2014); Ralis v. Ralis, 146 A.D.3d 831, 46 N.Y.S.3d 631 (2d Dep't 2017); In re H.M.S., 349 S.W.3d 250 (Tex. App. Dallas 2011); In re Estate of Hayes, 185 Wash. App. 567, 342 P.3d 1161 (Div. 3 2015).
- 3 State v. Hornbuckle, 746 S.W.2d 580 (Mo. Ct. App. E.D. 1988).
- 4 Matter of Yaccarino, 101 N.J. 342, 502 A.2d 3 (1985).
- 5 Delta Air Lines, Inc. v. Sasser, 127 F.3d 1296 (11th Cir. 1997); State v. St. Francis, 151 Vt. 384, 563 A.2d 249 (1989).
- 6 Jones v. Luebbers, 359 F.3d 1005 (8th Cir. 2004).

- 7 [State v. Briggs](#), 388 A.2d 507 (Me. 1978).
8 [Matter of Estate of Painter](#), 671 P.2d 1331 (Colo. App. 1983).
9 [Draper v. Reynolds](#), 369 F.3d 1270 (11th Cir. 2004).
10 [A.B.A. Code of Judicial Conduct](#), Canon 2, Rule 2:11(A)(3).
11 [A.B.A. Code of Judicial Conduct](#), Terminology.
12 [28 U.S.C.A. § 455\(b\)\(4\)](#).
 As to what constitutes a "financial interest" for these purposes, see [28 U.S.C.A. § 455\(d\)\(4\)](#).

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